IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 253 of 1995

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JALAMSINH @ JILUBHA @ JORUBHA UMEDSINH JADEJA

Versus

GEETA AGENCY

Appearance:

MR HM LATHIA for Appellant

MR MB PARIKH for Respondent No. 1

MR PV NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.H.KADRI

Date of decision: 17/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. This is an appeal under section 30 of the Workmen's Compensation Act, 1923 at the instance of the original workman, challenging the judgement and award of the Commissioner for Workmen's Compensation (Labour Court), Rajkot.

2. The Commissioner in the impugned judgement and award has awarded to the appellant workman a sum of Rs.9529.50 by way of compensation for the injuries sustained by him during the course of employment, and has awarded interest at the rate of 6% per annum. The Commissioner has refused to award any penalty or to make any order in this regard. A sum of Rs.250/- has been awarded to the appellant-workman by way of costs.

3. It is this award which is the subject matter of the present appeal.

4. Learned counsel for the appellant first sought to urge that the Commissioner was in error in not awarding any penalty. So far as this aspect of the matter is concerned, it is obvious that section 30(1) of the said Act permits an appeal only from the orders specified in the said subsection, and from no other orders. In this context, clause (aa) contemplates an appeal only where the impugned order awards penalty under section 4-A, and obviously, therefore, an order which does not award a penalty would not be appealable under the said provision. This contention, therefore, requires to be rejected.

5. It was next sought to be contended that although interest has been awarded to the workman under the award, which has been also mentioned in the final order following the judgement, the same is inconsistent with the findings recorded in the substance of the judgement. Even if that is so, we fail to appreciate as to how this could possibly give rise to any grievance on the part of the appellant workman. There is no controversy even from learned counsel for the respondent-insurer, that interest has in fact been awarded under the final order and the award. It also requires to be noted, which fact is admitted by the learned counsel for the respondent insurer, that no appeal has been preferred by the insurer from the findings recorded in the judgement, or from the final order and award in question. It is, therefore, obvious that the interest allowed in favour of the workman by the final order passed as a consequence of the judgement is an order in favour of the workman, and

therefore not appealable under clause (aa).

6. Learned counsel for the appellant then sought to urge before us the question of quantum of compensation which ought to have been awarded to the workman.

7. As regards the quantum of compensation, learned counsel for the appellant urged by various means that the compensation is inadequate and ought to have been determined at a far higher figure looking to the evidentiary material on record. It was urged in this context that the percentage of disability suffered by the workman has been determined by the Commissioner at a very very meagre figure. It was sought to be urged that the Commissioner has not correctly appreciated the medical evidence on record, and the evidence of the doctor in this context. No matter how this question is presented, the fact remains that this is entirely a question of appreciation of evidence, and at best, it may be a question of misappreciation of evidence. In any case, this would not give rise to "a substantial question of law" as contemplated by the first proviso to subsection (1) of section 30 of the Act.

8. It is, therefore, obvious that there is no substance in the present appeal and the same is, therefore, dismissed with no order as to costs.

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